INTERIOR BOARD OF INDIAN APPEALS

Tallgrass Petroleum Corp. v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

39 IBIA 9 (03/03/2003)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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TALLGRASS PETROLEUM CORP.,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 02-104-A
ACTING EASTERN OKLAHOMA	:	
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	March 3, 2003

Appellant Tallgrass Petroleum Corp. sought review of a March 26, 2002, decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that Osage Nation Oil Lease Contract No. 14-20-201-9444 had expired by its own terms for failure to produce oil in paying quantities. For the reasons below, the Board of Indian Appeals (Board) affirms that decision.

This lease was originally executed on October 20, 1958. It appears that the lease was assigned to Appellant in 1990. There is no dispute that the lease is in its extended term, and therefore, is held as long as oil is produced in paying quantities.

On January 18, 2002, the Superintendent advised Appellant that the lease had terminated by its own terms for failure to produce in paying quantities. The Superintendent further informed Appellant that minimum royalties might still be due. Thereafter, on January 25, 2002, the Superintendent billed Appellant for minimum royalties for December 1, 2000, through December 1, 2001. On February 8, 2002, Appellant paid the minimum royalty and a late penalty. By letter dated March 15, 2002, Appellant appealed the Superintendent's decision to the Regional Director.

On March 26, 2002, the Regional Director affirmed the Superintendent's decision. The Board received Appellant's notice of appeal of the Regional Director's decision on April 30, 2002.

Appellant has the burden of proving the error in the Regional Director’s decision. <u>Smith Energy Corp. v. Acting Muskogee Area Director</u>, 34 IBIA 123, 124 (1999). Although informed of its right to do so, Appellant did not file an opening brief. Therefore, all of Appellant's arguments are contained in its notice of appeal.

Appellant argues that the lease is still held by production because there are approximately 40 barrels of oil in the tank battery. Appellant admits, however, that no oil had been sold. In addition, Appellant makes no attempt to prove that, had it sold the oil in the tank, 40 barrels would constitute production "in paying quantities." The Board finds that Appellant has failed to carry its burden of proving that the oil in the tank constituted production in paying quantities.

Appellant also appears to be contending that BIA had previously allowed it to continue to hold this lease despite non-production.

The record shows that, on May 20, 1997, BIA notified Appellant that the well on this lease, in addition to other wells operated by Appellant, was shut-in or temporarily abandoned. BIA stated that all of these wells should be plugged or returned to production. Appellant was given a five-year period in which to return all of the wells to production. Action on the first well was to be initiated within 60 days of May 20, 1997. BIA also requested that Appellant provide a semi-annual report on its development plan. The letter concluded with the statement: "Failure to comply with this directive may result in the termination or cancellation of your leases." Nothing in the record indicates that either Appellant or BIA took any further action in response to this letter.

The record also indicates that BIA billed Appellant for minimum rentals in regard to this well on February 22, 2001. The bill states that there was no production reported on the lease from December 1, 1994, through December 1, 2000. Appellant paid the minimum rental bill on March 20, 2001. BIA did not notify Appellant that the lease had terminated for failure to produce.

Based on this background, it appears that Appellant believes that its payment of the minimum rental bill for December 1, 2000, through December 1, 2001, should be sufficient to allow it to continue to hold this lease. However, Appellant has not cited any legal authority allowing it to hold a non-producing lease in its extended term through the payment of minimum rentals.

Although it was not required to do so, the Board has examined the lease and relevant regulations for such authority. Paragraph 3 of the lease provides for the payment of rentals on a lease in its primary term if, after a well has been completed, production ceases. Nothing in this paragraph explicitly refers to leases in their extended term. The Board finds no other provision in the lease which relates to this situation.

The regulations governing oil and gas leases with the Osage Nation, found in 25 C.F.R. Part 226, are made part of the lease by Paragraph 16 of the lease. Subsection 226.11(c) provides in pertinent part: "After the primary term, Lessee shall submit with his [royalty] payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production." Section 226.28 further provides: "Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent."

The fact that BIA may previously have decided not to notify Appellant that the lease had terminated does not negate its authority under both the lease provisions and the regulations to determine if a lease is producing in paying quantities. The Board finds that Appellant has not carried its burden of proof on this issue.

Appellant also contends that it did not receive advance written notification prior to the Superintendent's January 18, 2002, notification letter. This may be a reference to Paragraph 17 of the lease, which provides that a lessee shall be entitled to notice and a hearing on a lease cancellation. However, as the Board has previously held, BIA does not cancel a lease when production ceases in paying quantities. Rather, the lease terminates by its own provisions. Magnum Energy, Inc. v. Acting Eastern Oklahoma Regional Director, 38 IBIA 141, 142 (2002), and cases cited therein. Paragraph 17 of the lease is not applicable under these circumstances. Id.

To the extent Appellant may be contending that its due process rights were violated, the Board has also previously held that due process is met by the right of appeal within BIA and to the Board. Natural Gas Compression Corp. v. Acting Eastern Oklahoma Regional Director, 37 IBIA 166, 167 (2002).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's March 26, 2002, decision is affirmed. 1/

//original signed
Kathleen R. Supernaw
Acting Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ Any arguments not specifically addressed were considered and rejected.